IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6797 of 1990
WITH
SPECIAL CIVIL APPLICATION NOS. 5610 OF 2005 TO 5644 OF 2005
WITH
SPECIAL CIVIL APPLICATION NOS. 5646 OF 2005 TO 5649 OF 2005.

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA **Sd/-**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BD SOLANKI - Petitioner(s)
Versus
GSRT CORPORATION & 1 - Respondent(s)

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Appearance :
MR YS MANKAD for Petitioner(s) : 1,
MR HARDIK C RAWAL for Respondent(s) : 1,
MR SN SHELAT for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA
Date : 15/12/2005

COMMON ORAL JUDGMENT

1. This petition under Article 226 of the Constitution was originally filed in representative capacity by the petitioner claiming to be an Additional

General Secretary and Executive Member of Nivrut GSRTC Karamchari Sangh. Subsequently, formal one page petitions were filed in the name of other petitioners sought to be represented in the first petition. All the petitioners are either the retired employees of the respondent No.1 (“GSRTC” for short) or their heirs. The main prayers of the petitioners are to the effect that the petitioners should be paid pension under the Liberalized Pension Rules as applied to the employees of the State of Gujarat and the arrears of such pension should be paid with interest. All the petitions, having common factual background and contentions, were argued together and are disposed of by this common judgment.

2. The factual back-ground, in brief, is that the petitioners had joined the services before 1.6.1948 in the then native State of Kutchh in the Kutchh State Motor Service Board which was a department of the State. At that time, they were governed by the Kutchh District Pension Rules, 1942 and upon accession of the State of Kutchh to the Union of India, the Liberalized Pension Rules of 1950 of the Central Government were made applicable to the employees concerned. On 1.11.1956, the employees were transferred to Kutchh State Transport Corporation which was established under the Central Road Transport Corporation Act after merger of Kutchh into the bigger bilingual State of Bombay under the State Reorganization Act, 1956. The Kutchh State Transport Corporation was continued till 29.4.1960, on which day the GSRTC was formed, and into which the Kutchh Corporation was merged. It is the contention of the petitioners that by virtue of the provisions of merger

agreement dated 4.5.1948 between Maharao of Kutchh and Governor General of India and the provisions of Sections 115, 116 and 117 of the S.R. Act and Section 81 of the B.R. Act their conditions of service could not be altered to their disadvantage or detriment without sanction of the Central Government and they are entitled to get the benefit of the Liberalized Pension Rules of the Central Government.

2.1. On 27.1.1961, the GSRTC passed a resolution No. 139 whereby the rules for Contributory Provident Fund which were in force in the GSRTC were made applicable to all the employees of GSRTC with effect from 1.5.1960 with the special provision that the employees in the Kutchh area who were governed by the Pension Rules were allowed to continue to have benefits thereof. However, it was stipulated in the resolution that any change in the Pension Rules by which they were governed, even if effected by the State or Central Government in future, would not be applicable to those employees. The Pension Rules by which they were governed would, therefore, be treated as 'frozen' and they would be eligible only for the pension under the Pension Rules by which they were governed at that time. In view of the alternative available to those employees, an option was given to them to come under the Provident Fund Regulations of the GSRTC which option was required to be exercised before 30.6.1961.

3. The contentions of the petitioners are that they were not informed about the option that was given, that it was neither just nor legal, that it was

prejudicial, that freezing of benefit at the cut off date of 1.5.1960 was illegal, that the period of service from 1.5.1960 till the date of retirement could not be lost, that option forms were not given to the employees, that resolution No. 139 was not sanctioned by the Central Government, that they were not informed about the conditions in the option and that they were not informed about the terms being less favourable which made them opt for the truncated Pension Rules which were clearly disadvantageous to them. The averments and contentions as summarized above were contradictory and there was no explanation for gross delay of about 30 years in raising those contentions. It is stated in the petition that one J.M. Dholakia, a similarly situated retired employee of GSRTC, had approached the Civil Court which had, by the judgment dated 25.4.1988, allowed declaratory suit by a decree to the effect that the aforesaid resolution dated 27.1.1961 was illegal and the plaintiff therein was entitled to receive pension as per the Liberalized Pension Rules of the State. Admittedly, that judgment was carried in appeal and has reached this Court in the form of Second Appeal No. 70 of 1990 and the learned counsel for the parties have conceded that the judgment in these petitions would govern the rights of all retirees and would also decide the fate of that appeal.

4. By filing an affidavit of the Administrative Officer of GSRTC, it is submitted that, by the aforesaid resolution dated 27.1.1961, the employees of Kutchh area who were governed by Pension Rules were allowed to remain under Pension Rules with an option to opt

for Contributory Provident Fund Scheme which was made applicable to all employees of the GSRTC and for them there was no Pension Scheme. The employees who had opted to remain under the then prevailing Pension Rules were estopped from contending that they were entitled to the benefit of Pension Rules as amended from time to time. It is specifically denied that the employees were not informed about the option available to them. At one stage, a proposal was made to bring some change in the conditions of service regarding pension but the State Government had not granted approval in respect of the recommendation made by GSRTC pursuant to its resolution dated 29.7.1978. It is also contended that any revision or benefit conferred upon the Central Government employees or the State Government employees cannot, directly or indirectly, be made applicable to the petitioners since they ceased to be the civil servants of the State and the rules applicable to the Government servants could not automatically apply to the petitioners.

5. In the above background of facts and contentions, the grievances of the petitioners clearly appear to be that their pension is fixed under the then prevailing Pension Rules and subsequent amendment to those rules have not been given effect to as far as the petitioners were concerned. It cannot be gainsaid that freezing of the then prevailing Pension Rules was made clear and an option was given to switch to Provident Fund Regulations of the Corporation. It was not that the pensionary benefits were frozen as were available under the then prevailing rules in 1961, as submitted by learned counsel Mr. Mankad but it was the

Rules which were frozen in their application to the particular class of employees in view of the historical background of their having once been Government servants. It was clear that the petitioners had consciously or by necessary implication opted for the benefits under those frozen Pension Rules.

6. It is too late in the day for the petitioners to challenge, after three decades of operation, the relevant Clause 7 of the Resolution No. 139 and contend either that the options were not given or were not exercised or that the whole clause was illegal or arbitrary. Besides the fact of choice and option given to the employees concerned at the relevant time and besides the gross delay and laches, no legal ground was made out to hold that giving of option on the basis of Pension Rules prevailing at the relevant time or to come under Provident Fund Regulation of the Corporation was in any way illegal, discriminatory or arbitrary. The learned counsel for the respondent relied upon the recent judgment of the Supreme Court in *State of Punjab & others Vs. Amarnath Goyal and Ors. [2005 SCC (L&S) 910]* to counter the arguments against limiting the benefits by a date. It is observed in that judgment that the financial and economical implications are very relevant and germane for any policy decision touching with administration of the Government at the Centre or at the State level and even in cases of pension, subsequent judgments of the Supreme Court have considerably watered down the rigid view taken in *D.S. Nakara Vs. Union of India [1983(1) SCC 305]* and later in *T.N. Electricity Board Vs. R. Veerasamy and others [1999(3) SCC 414].* In the later

Veerasamy's case (supra), the Supreme Court has observed that financial constraints could be a valid ground for introducing a cut-off date while implementing a pension scheme on a revised basis. In that case, pension scheme applied differently to persons who had retired from service before 1.7.1986 and those who were in employment on the said date. It was held that they could not be treated alike as they did not belong to one class.

7. In the facts and for the reasons discussed hereinabove, the petitions are not only suffering from vices of delay and laches but no ground is made out to sustain the pleas that the petitioners were subjected to hostile discrimination or that the reservation by which they were allowed to retain the benefit of the application of pension rules was in any way illegal or arbitrary. The petitions are, therefore, rejected and Rule is discharged with no order as to costs.

Sd/-

(D.H. WAGHELA, J.)

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